In the High Court of Judicature at Madras

Dated: 15/03/2004

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The Honourable Mr.Justice R.Jayasimha Babu
and
The Honourable Mr.Justice M.Karpagavinayagam

Writ Appeal No.64 of 2001

Metropolitan Transport Corporation,
represented by its Managing Director,
Division I, Pallavan Salai, Chennai 2. ... Appellant

-Vs-

1. The Presiding Officer,
Principal Labour Court,
High Court compound,
Chennai 104.

2. S.Ashok Kumar ... Respondents

Writ Appeal filed against the order of a learned single Judge of this Court in writ petition No.13408 of 1999 dated 13.12.1999.

!For Appellant : Mr.R.P.Kapilan

^For Respondent 2: Mr.V.Prakash

:JUDGMENT

(Judgment of the Court was delivered
by R.Jayasimha Babu, J.)

The second respondent who after having worked for a long number of years as a conductor with the employer - a Government Transport Corporation, which is registered under the Companies Act and is wholly owned by the Government became unfit to continue as a conductor as he could not stand for long hours on account of an accident which occurred during his employment. He was therefore given the post of helper from which post his services were later terminated.

2. He challenged the order of termination before the Labour court but without success. The learned single Judge before whom the writ petition filed

by him challenging the order of the Labour Court came up, having regard to all the facts of the case allowed the petition, set aside the award of the Labour Court, set aside the order discharging him which order had been passed on 27.01.1994, and directed the employer to reinstate the petitioner before him and give him light duty or such other work sedantary in nature suitable to his health condition but subject to payment of the scale of pay which he had been drawing as a conductor and also one half of all the arrears payable between 27.01.1994, and till the date of reinstatement within three months' time from the date of his order, which was made on 13.12.1999.

3. We are informed by the counsel for the employee that the employee has not been reinstated as a conductor but as a junior helper and that he is drawing a scale of pay which is about Rs.300/- less than what he was drawing when he was a conductor. The employee has accepted that employment and has not complained.

4. Learned counsel for the employer submitted that since the writ petitioner has now been given employment, the arrears of pay which the learned Judge had directed to be given should be computed on the scales of pay of a helper and not as a conductor. That argument is wholly untenable. The learned Judge has rightly held that the order of discharge on the sole ground that he had become disabled which disablement he had acquired in the course of his employment, was not sustainable, and therefore he should be put back in a position with the same emoluments as the one held by him at the time of his discharge. That position being that of a conductor, the arrears of pay directed to be paid would be that which is payable to one holding the post of a conductor.

5. Counsel for the appellant sought to rely on a Government Order of the year 1981 which directs that the persons who are found medically unfit to continue to work on account of inter alia, of disability acquired during the course of employment should be treated only as a fresh recruits. It was therefore, claimed that the Government Order should be allowed to be implemented and the employees be treated as a fresh recruit.

6. We see no substance in this contention. That Government Order on which reliance was placed was made at a time when Parliament had not legislated with reference to persons who suffer from disabilities. Parliament having taken note of the plight of the disabled - either born disabled or those who acquired it later, has legislated a special enactment for their benefit - "The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 199 5".

7. That Act was enacted in the year 1995. Most of the agencies of the Government as also public at large appear to have remained quite ignorant of it's beneficial provisions and not enough care has been taken by those concerned to ensure the benefits conferred by that Act are in fact extended to those entitled thereto.

8. One of the provisions contained in that enactment in Chapter VIII titled "Non-Discrimination" which consists of sections 44 to 47 is Section 47

which reads thus:
S.47. Non-discrimination in Government employment :
(1) No establishment shall dispense with, or reduce in rank, an employee who acquires a disability during his service;
Provided that, if an employee, after acquiring disability is not suitable for the post he was holding, could be shifted to some other post with the same pay scale and service benefits:
Provided further that if it is not possible to adjust the employee against any post, he may be kept on a supernumerary post until a suitable post is available or he attains the age of superannuation, whichever is earlier.
(2) No promotion shall be denied to a person merely on the ground of his disability.
Provided that the appropriate government may, having regard to the type of work carried on in any establishment, by notification and subject to such conditions, if any, as may be specified in such notification, exempt any establishment from the provisions of this section.

9. Learned counsel for the employer sought to contend that since the section is captioned as "Non discrimination in Government employment" employment under the Government companies even when wholly owned by the Government should not be equated to Government employment, and that persons employed by such Government companies need not be given the benefit which Section 47 extends to those in Government employment.

10. We do not find it possible to accept to that submission. The concept of non discrimination is one which is clearly traceable to Article 14 which occurs in Part III dealing with fundamental rights of citizens of India. Article 14 provides that, "The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. 'State' for the purposes of the Chapter on fundamental rights is defined in Article 12 as, ' including' the Government and Parliament of India and the Government and Legislature of each of the States and all local and other authorities within the territory of India or under the control of the Government of India.
11.The Government company which carries on the business that was earlier carried on by the Government directly in any one of it's departments, and in which hundred per cent of the capital is held by the government is clearly an agency or instrumentality of the Government. The appellant is merely a convenient legal entity through which the Government operates the transport undertaking owned by it and the form of such Corporation would not have the effect of depricing it's employees of the rights conferred by Chapter III of the Constitution of India. The Supreme Court in the case of Mysore Paper Mills Ltd. vs. Mysore Paper Mills Officers Association, (2002) 2 SCC 167 has after reviewing the decisions of the Court concerning agencies and instrumentalities of the State from 1969 to 2001 from the case of Praga Tools vs. C.A. Immanuel, (1969) 1 SCC 585 to thecase of Steel Authority of India vs. 7National Union Water Front Workers,(2001)7 SCC 1, reaffirmed the tests for determining as to when a Government company may be regarded as an agency or instrumentality of the Government. The reference to Government in section 47 of the Act which is captioned as "non discrimination" is therefore to be construed as including the agents and instrumentalities of the Government in

the light of the provisions of the Constitution, particularly Articles 12 and 14 in Chapter III.

12. Section 47 itself though captioned as 'Non discrimination in Government employment' the body of that section does not refer to the Government at all. It merely refers to an 'establishment'. The word establishment referred to therein need not necessarily be a department or a wing of Government, but could be an establishment which is owned by or is under the control of the Government.

13. Such a construction of the section is warranted having regard to the objects and the purpose of the Act which is intended to ensure that there is no discrimination against persons who suffer from disability.

14. The employees of the Transport Corporation which is wholly owned by the Government therefore come within the scope of the term establishment used in section 47(1).

15. The other parts of the Act, more particularly Chapter VI which deals with employment requires the Government to identify posts in establishments which can be reserved for persons with disabilities; provides for reservation of posts for disabled persons, requires establishment of special employment exchange; and also requires that vacancies which are reserved for disabled persons be carried forward. It also requires the employers to maintain records relating to the persons with disabilities and provides that the appropriate Governments and local authorities shall formulate schemes for ensuring employment of persons with disabilities.

16. The Act also requires the Government educational institutions and other educational institutions to reserve not less than three per cent of the seats for persons with disabilities.

17. The order of the Government of the year 1981 on which the appellant relies being an order which is clearly inconsistent with the Act certainly cannot be given effect to. The Government is duty bound to implement the provisions of the Act.

18. In this case, there is no dispute about the fact that the disability was the result of an accident which had occurred when he was attending to his duty - a nail in the bus has pierced into his leg.

19. We must notice here the decision of the Supreme Court in the case of Kunal Singh vs. Union of India, (2003) 4 SCC-524 a decision rendered in a case of a constable in the special service who had been invalidated from service on the basis of a report of the medical Board. The Court held that Section 47 of the Act required that his position and pay be protected. In that case the Court set aside the order of the employer terminating the service of the employee on the ground that he was medically unfit to be continued in service. The failure on the part of the employer to give effect to the special enactment was held to have vitiated the order of termination.

20. Having regard to this position in law, we see no illegality in the order that has been made by the learned single Judge.

21. The appeal is dismissed.

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